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JUN 04 2009

OFFICE OF PETITIONS

In re Application of	:	
Johannes P. Verduijn	:	
Application No. 08/211,873	:	DECISION ON TWO PETITIONS
Filed: June 3, 1994	:	PURSUANT TO 37 C.F.R.
Attorney Docket No.: 91A055	:	§ 1.53(d) and 1.182
Title: NANOMETER-SIZED	:	
MOLECULAR SIEVE CRYSTALS OR	:	
AGGLOMERATES AND PROCESSES FOR	:	
THEIR PRODUCTION	:	

This is a decision on the "PETITION UNDER 37 CFR § 1.181(a)(3)" filed December 30, 2008, requesting the Office to act on a File Wrapper Continuation (FWC) that was filed in the present application on June 3, 1996. This submission is being treated as a petition pursuant to 37 C.F.R. § 1.53(d).

This is also a decision on the petition pursuant to 37 C.F.R. § 1.182, filed on February 27, 2009, requesting expedited handling of the above matter.

The petition for expedited review under 37 CFR 1.182 is granted.

The petition under 37 CFR 1.53(d) is granted.

ON PETITION FOR EXPEDITED REVIEW

37 C.F.R. 1.182 provides that:

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Director, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(f).

The present request is properly treated under 37 C.F.R. § 1.182 as the expedited review of petitions is not specifically provided for in the regulations. The petition includes the fee required for such consideration. It is determined that consideration of the petition under 37 C.F.R. § 1.53(b) out of turn is justified.

The Petition under 37 C.F.R. 1.182 for expedited review is **GRANTED**.

Accordingly, consideration now turns to the Petition under 37 C.F.R. § 1.53(d).

**ON PETITION UNDER 37 C.F.R. 1.53(D)
TO ACCEPT AND TREAT AN IMPROPER APPLICATION UNDER § 1.53(D) AS A
PROPER APPLICATION UNDER § 1.53(B)**

The application was deposited on June 3, 1994. A final rejection was mailed on October 2, 1995. On March 22, 1996, and after-final amendment was received. A notice of appeal was filed on April 4, 1996, along with a three-month extension of time so as to make timely these two responses. An advisory action was mailed on May 3, 1996, which indicated that the after-final amendment failed to place this application in consideration for allowance. An appeal brief was not filed subsequent thereto - no response, and no further extensions of time were received. Consequently, this application went abandoned by operation of law on June 5, 1996. A notice of abandonment was mailed on November 15, 1996.

With this petition, Petitioner has asserted that a FWC application was timely submitted on June 3, 1994. Petitioner has submitted a copy of a German reference (Number 1194828), a copy of international application number PCT/EP92/02386, a copy of foreign application number 1-153514, a preliminary amendment, an information disclosure statement, a 20-page specification, two pages of claims, a single-page abstract, 18 pages of drawings,

and a postcard receipt which evinces that a "1.62 Continuation of 08/211,873, Preliminary Amendment, FORM 1449, and references" were received in the Office in June of 1996¹ and this FWC application was accorded an application number of 08/656,725 (Office records show that the filing fee of \$862 was received on June 3, 1996).

The Federal Register sets forth, *in pertinent part*:

Section 1.62

Section 1.62 is removed and reserved.

Section 1.62 is unnecessary due to the addition of § 1.53(d) to permit the filing of a continued prosecution application.

It is anticipated that applications purporting to be applications filed under §§ 1.60 or 1.62 will be filed until the deletion of §§ 1.60 and 1.62 become well known among patent practitioners. An application purporting to be an application filed under § 1.60 will simply be treated as a new application filed under § 1.53 (i.e., the reference to § 1.60 will simply be ignored).

Applications purporting to be an application filed under § 1.62 will be treated as continued prosecution applications under § 1.53(d), and those applications that do not meet the requirements of § 1.53(d) (e.g., continuation-in-part applications or continuations or divisional of applications filed before June 8, 1995) will be treated as improper continued prosecution applications under § 1.53(d). Such an improper application under § 1.53(d) may be accepted and treated as a proper application under § 1.53(b) by way of petition under § 1.53(e) (and submission of the \$130 fee pursuant to § 1.17(i)). A petition under § 1.53(e) to accept and treat an improper application under § 1.53(d) as a proper application under § 1.53(b) must include: (1) The \$130 petition fee; (2) a true copy of the complete application designated as the prior application in the purported § 1.62 application papers; (3) any amendments entered in the prior application; and (4) any amendments submitted but not entered in the prior application and directed to be entered in the purported § 1.62 application papers. In an application purporting to be a continuation or divisional application under § 1.62, the true copy of the prior application will constitute the original disclosure of the application under § 1.53(b), and any amendments entered in the prior application or not entered in the prior application but directed to be entered in the purported § 1.62 application papers and submitted with the § 1.53(e) petition will be entered in the application under § 1.53(b) and considered by the examiner for new matter under 35 U.S.C. 112, ¶ 1, and 132 (emphasis added). In an application purporting to be a continuation-in-part application under § 1.62, the true copy of the prior application, any amendments entered in the prior application or not entered in the prior application but directed to be entered in the purported § 1.62 application papers and submitted with the § 1.53(e) petition, and any preliminary amendment submitted with the purported § 1.62 application will constitute the original

¹ The exact date is not legible, but appears to be June 10, 1996.

disclosure of the application under § 1.53(b). See comments relating to § 1.53.

62 Fed Reg 53131 at 53147

Pursuant to the section of the Federal Register reproduced above, the filing of this FWC application will be treated as an improper application under § 1.53(d).

The \$130 fee that is associated with the filing of this petition will be charged to Petitioner's Deposit Account in due course.

Petitioner has submitted a true copy of the complete application designated as the prior application in the purported Rule 1.62 application papers, along with a preliminary amendment that was included on initial deposit of the FWC application.

The papers that have been submitted with this petition that are associated with application number 08/656,725 will be copied and placed into the electronic file that is associated with application number 08/656,725 in due course.

Pursuant to this decision, the application will be referred to the Office of Patent Application Processing (OPAP) for further processing. **OPAP will treat application number 08/656,725 as a continuation of application number 08/211,873.**

Petitioner will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OPAP.

The general phone number for OPAP is 571-272-4000. Telephone inquiries **regarding this decision** should be directed to the undersigned at (571) 272-3225.²

It is noted that the address listed on the petition differs from the address of record. The application file does not indicate a change of correspondence address has been filed in this case, although the address given on the petition differs from the address of record. If Petitioner desires to receive future correspondence regarding this application, the change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future

² Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for any further action(s) of Petitioner.

correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary. Petitioner will not receive future correspondence related to this application unless Change of Correspondence Address, Patent Form (PTO/SB/123) is submitted for the above-identified application. For petitioner's convenience, a blank Change of Correspondence Address, Patent Form (PTO/SB/123) is enclosed.

/Paul Shanoski/
Paul Shanoski
Senior Attorney
Office of Petitions

cc: Hershkovitz & Associates, LLC
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